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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Item 17

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS
AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

Written statement of Disabled Peoples' International a
non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 August 1991]

1. In many countries, the status of disabled children is not equal to the status of non-disabled children. Most developing countries - and in particular the Asian and Pacific region - share common problems of poverty, illiteracy, economic disadvantage, inadequate distribution of rehabilitation services, social bias and discrimination. In addition, families with disabled children get no support from the Governments and receive no social services. Due to the lack of social welfare and rehabilitation services, the fate of disabled children in these countries is hopeless. Their fundamental human rights, such as the right to live, the right to be taken care of and the right to equal education, have been ignored.

2. In some countries, disabled infants, and especially female infants, are denied even the right to live. They are killed by their fathers, mothers or even doctors. Especially in rural areas, disabled children are foreclosed from medical service and treatment. Even worse, in some cases disabled children are killed because their organs are sold. Another example of cruel exploitation of children is to make them disabled by breaking their arms or legs and forcing them to be beggars.

3. It is a basic human right to have access to free education, at least at the elementary level. Higher education should be equally accessible to all on the basis of merit. However, in many Asian countries and in the Pacific, Governments do not make education accessible to disabled children. They do not provide disabled children with special education in integrated schools. They pay no attention to the special needs of disabled students. Female disabled students especially suffer from this kind of discrimination. Disabled girls mostly lead an isolated life in their homes.

4. In the field of health care services disabled children's right to give consent to or reject medical treatment is often violated.

5. Concerning the prevention of discrimination and protection of women, although there have been some advances within the last years of the United Nations Decade of Disabled Persons in addressing the special situation of disabled women, we have to point out that the issue has not received the attention it merits. Disabled Peoples' International is pleased with the mention the Special Rapporteur, Mr. Despouy, gave to the issue in his final report on human rights and disability (E/CN.4/Sub.2/1991/31, paras. 140-144). It should be emphasized that there is extremely limited access to health services, education, vocational training and employment for women with disabilities. Furthermore, the problem is compounded by the fact that there is so little research or literature on this critical topic.

6. A major concern of DPI is the issue of sexual abuse of disabled women. Most people do not believe that disabled women are victims of sexual abuse and harassment, and this view is supported by a lack of statistics about these abuses. However, DPI can cite many examples. Disabled women (especially the deaf and the mentally disabled) are frequent victims of rape and other kinds of sexual abuse by family members and men who work professionally for disabled people. Most common, however, is the massive occurrence of sexual abuse of disabled women in institutions, not to mention the total segregation of women in these facilities. (This is another reason why DPI considers institutionalization of disabled people to be a human rights violation; the other reasons have been mentioned in our written statements under agenda items 12 and 7.)

7. Another example of this victimization is in developing countries where disabled women are forced into prostitution as a way of making a living.

8. Women who are victims of sexual abuse have nowhere to turn for medical or legal services. Crises centres are physically inaccessible, in addition to not being able to address particular needs of disabled women.

9. Often, the only treatment these victims are provided with is sterilization. This is another devastating violation of women's rights. DPI strongly urges the United Nations to take action. To begin to stop these crimes against disabled women, funds are desperately needed to research this subject and to document these violations.

10. In conclusion, DPI urges Member States to focus more attention on these issues and to ensure that disabled children and disabled women have the opportunity to exercise their human rights.



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Sub-Commission on Prevention
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Forty-third session
Agenda item 12

HUMAN RIGHTS AND DISABILITY

Written statement of Disabled Peoples' International, a
non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[2 August 1991]

1. Disabled Peoples' International welcomes the final report of the Special Rapporteur for human rights and disability, Mr. Leandro Despouy (E/CN.4/Sub.2/1991/31).
2. Disabled Peoples' International, a cross-disability coalition of nearly 100 national affiliates mostly from the developing countries, began efforts in 1982 to promote and protect the human rights of persons with disabilities and to prevent disabilities caused by human rights violations.

3. The Sub-Commission and the Commission responded, and in 1984 the Sub-Commission named Mr. Despouy Special Rapporteur. Since 1984 the Rapporteur has worked closely with our organization and with other organizations of disabled peoples. We wish to take this opportunity to thank the Rapporteur for his warm, productive and cooperative relationship with Disabled Peoples' International. At all times he acted with true understanding of our organization's three basic concepts: full participation and equality, the importance of our own voice (the organization's motto is Vox nostra), and DPI's commitment to peace. Regarding the last concept, DPI had republished its Peace Statement and had made public its special appeals for peace prior to the initiation of armed hostilities and had transmitted them to the President of the United States, the Prime Minister of Canada and the Secretary-General of the United Nations. We are extremely pleased that throughout his report the Rapporteur emphasized the relationship between violations of the rules of war, inhumane weapons and the incidence of temporary and permanent disability (see paras. 119-129 of the report).

4. DPI wishes to make some additional comments regarding Mr. Despouy's outstanding study. We are pleased that the Special Rapporteur pointed out the special problems of vulnerable groups such as children, women, indigenous peoples, migrant workers and refugees (paras. 130-157) that bear on the question of disability.

5. The Rapporteur has also stressed another prime issue for DPI - that of extreme poverty and underdevelopment and the incidence of disability (paras. 158-169). In this light, DPI stresses the obligations of the international community as a whole to address pressing issues of humanitarian concern in conformity with its obligations under Article 1 of the Charter of the United Nations. The Rapporteur also indicates a new initiative of the Sub-Commission, that of human rights and the environment, that is directly related to the incidence of disability.

6. The Rapporteur also discusses apartheid and disability, another key issue for DPI (paras. 170-173). While we join the Rapporteur in noting the recent progress in South Africa in eliminating apartheid, we join him also in pointing out that conditions are far from satisfactory. DPI urges the international community to seek ways to ensure that the impact of long years of apartheid, and other discriminatory measures on causes, care, treatment and services for persons with disability be taken on as an issue of the highest priority.

7. Discrimination in all areas against persons with disabilities is rampant worldwide, and we are pleased that the Rapporteur presented many of the key issues in this enormous area of concern. We totally agree with his statement that the primary obligation to suppress discrimination and remove all barriers to full integration of persons with disabilities falls on Governments (para. 206). Governments may not sit idly by but must act themselves in this area. There has been a distressing tendency in certain developed countries to deny a duty in this area and to pass off responsibility to "charity" organizations. We affirm that this constitutes a violation of the rights of disabled persons.

8. Section IV of the report contains a particularly salient discussion of the community care versus institutionalization debate. DPI strongly opposes institutionalization except in the most extreme of circumstances. We applaud the Rapporteur's emphasis on what we call the mandate for independent living - which requires community-based and in-home care. In no way may absence of these independent living services be used to justify institutionalization - Governments are under a legal duty to assure that these services are available through government programmes or other government-supported efforts.

9. The Rapporteur also addresses the importance of organizations of disabled persons and methods to facilitate their formation and functioning (paras. 221-228). To illustrate their importance in this field, we are convinced that the Sub-Commission and Commission would not have taken up the question of human rights and disability were it not for the pressure from DPI. In national situations, we have been constantly appalled at what non-disabled persons plan for disabled persons - whether in terms of employment, rehabilitation, independent living, wheelchair design, education, sports or any other area. We have clearly demonstrated in a number of countries that organizations of disabled persons and individual disabled persons are the best resources regarding our needs and the best way to deliver them.

10. Organizations of disabled persons are especially important because of the critical issue of remedies for discrimination and other human rights violations. DPI remains extremely concerned because of serious domestic barriers to redress - whether because of judicial barriers (failure of Governments to acknowledge economic or other rights, lack of justiciable laws, etc.), lack of legislative action, executive branch hostility, social hostility. We appreciate that the Rapporteur pointed out this problem (paras. 255-256) and agree that remedies worldwide are going through a period of transformation.

11. Rehabilitation is also a necessity to ensure the full human rights of persons with disabilities. We insist on a mandate for rehabilitation. The Rapporteur points out a number of issues relating to rehabilitation (paras. 233-241). The Rapporteur mentions International Labour Organisation Convention No. 159 on Rehabilitation and Employment (Disabled Persons). DPI participated heavily in the development of that Convention, and we remain distressed at the low number of ratifications this Convention has received. We urge States that have not done so to ratify Convention No. 159 as an issue of highest priority, especially in light of the conclusion of the United Nations Decade of Disabled Persons in 1992.

12. Finally, DPI wishes to comment on the Rapporteur's recommendations. We think most strongly that an ombudsman would be most useful in this area. Issues of disability, while invoking the same general provisions of human rights as all other issues, clearly require specialized remedies. For example, institutionalization, a deprivation of liberty and therefore a human rights violation, requires not only remedies such as habeas corpus or amparo, but also the provision of specialized community care such as services for independent living. Similar examples exist for practically all effected rights. We concur that disabled persons and their organizations also ought to

continue to utilize all the relevant international human rights procedures. The Committee on Economic, Social and Cultural Rights appears to us to be particularly relevant in this area, and should be utilized to the maximum possible.

13. In conclusion, DPI would like to make a strong recommendation that the Rapporteur did not make - that the report be published in the United Nations World Campaign for Human Rights Study Series or other appropriate series. We also urge the Sub-Commission to ask the Commission to recommend that the Department of Public Information facilitate its dissemination in Braille, large print and on tape and in children's versions.



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Agenda item 7

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION
OF HUMAN RIGHTS

Written statement of Disabled Peoples' International,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which
is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[2 August 1991]

Independent living versus institutionalization

1. Independent living as a movement has spread over many countries of the world and has become an international movement. This is one of the major achievements of the United Nations Decade of Disabled Persons. While we acknowledge that some governments have undertaken large efforts in supporting independent living programmes in their countries, we have to point out that this change of governments' attitudes was primarily brought about by the social movements of disabled people in each country.
2. As the Special Rapporteur, Mr. Leandro Despouy, made clear in his final report on human rights and disability (E/CN.4/Sub.2/1991/31), discrimination against persons with disabilities is rampant worldwide. We are pleased that the Special Rapporteur presented many of the key issues in this area of great concern. We totally agree with his statement in paragraph 206 that the primary obligation to fight discrimination and remove all barriers to full integration of persons with disabilities falls on governments.
3. In order to achieve that goal, governments have to go beyond the point of viewing independent living as a kind of social benefit, which might be granted or not, depending on the social budget of a given community. Access to independent living services must be considered as a fundamental human right for disabled people all over the world. To leave the task of establishing and disseminating independent living services to charity organizations constitutes a violation of human rights.
4. Governments have to undertake action to support programmes based on the basic principles of the philosophy of independent living. Some of these principles are:
 - (a) Disabled people have a right to equality and access to every field of societal, economical and political life;
 - (b) Disabled people are the best experts concerning their own affairs. No matter what kind of disability a person has (be it physical, mental or psychological) and no matter how severe the disability is, a disabled person can decide for himself or herself where and how he or she wants to live. However, in order to make this decision, there must be a wide range of various independent living services, such as community-based personal assistance services, accessible housing and transportation;
 - (c) There is no need to separate disabled people from the non-disabled population. Segregated education and institutionalization are the most severe forms of discrimination of disabled people. DPI strongly opposes segregation and institutionalization as a violation of fundamental human rights. In cases where institutionalization is considered the exceptional solution, the disabled person has to be considered as a detainee who has human rights with access to legal remedies, such as those mentioned by the Special Rapporteur in paragraphs 214-215 of his report.

5. In no way may absence of independent living services - such as personal assistance services - be used to justify institutionalization of disabled people. Governments are under legal duty to assure that these services are made available through government programmes or other government-supported efforts.

6. Independent living as a concept of self-determination and equality also implies the right for disabled people to be different. This means, as the Special Rapporteur has pointed out in paragraph 220, that society has the duty to adjust to disabled people's needs. Society has no right to demand that disabled people surrender their right to be different and comply with discriminatory circumstances. It also means that disabled people have a right to look different, or act differently without losing their equal rights. DPI is deeply concerned about the growing tendencies in many countries to fight what is considered the "disability problem" by extermination through practices of genetic engineering or euthanasia.



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Forty-third session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION
HAS BEEN CONCERNED

Written statement submitted by Disabled Peoples' International, a
non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication
which circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[26 August 1991]

1. Disabled Peoples' International will first address the question of human rights and the environment and the study by Mrs. Fatma-Zohra Ksentini (E/CN.4/Sub.2/1991/8) which we think is an extremely important effort, not only for persons with disability but for all of humankind.
2. The relationship between environmental problems, human rights violations and disability is patently clear. As the Rapporteur for human rights and disability set out in his final report (E/CN.4/Sub.2/1991/31), Mrs. Ksentini's preliminary report gives a series of examples which clearly illustrates this point.

3. While it is early to reach any conclusions on a number of critical issues, we would like to bring to the attention of the Rapporteur and the Sub-Commission the example of the first modern ecological disaster - one which 30 years later still affects hundreds of survivors with serious disability, some of whom have yet to receive any remedy. This is the case of Minamata, Japan and the disastrous consequences of mercury poisoning.

4. The poisoning of Minamata Bay by Chisso Company began before World War II, was suspended for part of the war and began again in 1946. By 1953, most fish from Minamata Bay had disappeared and human beings in the area were beginning to show some effect. It was not until 1958 that scientists traced the origins of the mysterious disease to organic mercury discharge from the Chisso Company. It was not until 1969 that Chisso closed the section of its facilities which used mercury. And it was not until 1978 that authorities began cleaning up Minamata Bay - which as of today is still not finished.

5. Exact figures of human casualties - either death or permanent disability - have never been studied comprehensively. This is a fact that DPI finds totally unacceptable, especially because scholars have estimated that in Minamata and surrounding areas there are over 100,000 victims.

6. The Government has claimed no liability, saying there were no environmental protection laws at the time and no way for it to regulate Chisso or any other company. The Government has provided some limited medical care, physical rehabilitation and, in some cases, institutional care under conditions that DPI finds unacceptable.

7. Meanwhile, the victims and their lawyers fight for damages from Chisso individually (there are no class-action law suits under Japanese law), some winning fairly large settlements and some not as much. There are a number of victims that are unable to retain lawyers because they are too poor, and although the bar associations have tried to reach as many as possible, many victims have no representation. Chisso remains in operation, in part to be able to pay the damage awards of the victims. Because Chisso was facing bankruptcy, the Government passed a law in 1978 which was essentially a rescue package for Chisso but which placed the burden on Kumamoto Prefecture, which was required to issue bonds to sell to loan the proceeds to Chisso. Now, Chisso cannot repay the loans and the Prefecture is in fiscal crisis due to Yen 49,754 million outstanding.

8. Minamata may have been the first large-scale disaster but, as time has shown, it was not the last. DPI considers the incident one of human rights violations, not merely an unfortunate accident. Governments have a duty to promote and protect the lives and health of persons under their jurisdiction. It is not acceptable to have no legislation controlling the operations of industrial enterprises. Obviously, there is a need for effective international standards so that environmental catastrophes are not repeated. But if there are such catastrophes, the companies involved and the Governments are ultimately liable. In the case of companies operating in other countries, the country of origin of the foreign company also has a duty to regulate for safe operations and hence liability if the company does not operate safely.

9. There also must be effective remedies for victims of these catastrophes - the nearly 30-year wait for some victims to receive even a token remedy is clearly much too long. Governments should ensure that from day one, victims receive proper care and recompense.

This and other modern tragedies illustrate the mutually important efforts of Mrs. Ksentini and Mr. van Boven, whose Progress report (E/CN.4/Sub.2/1991/7) is now before the Sub-Commission and whose Final report on compensation will be completed at next year's session. We are convinced that recommendations made by Mr. van Boven regarding remedies such as restitution and compensation will be highly useful to Mrs. Ksentini as she develops her study.

Disabled Peoples' International also wishes to comment on the Progress Report on Discrimination against HIV-infected People or People with AIDS by the Special Rapporteur Mr. Luis Varela Quiros (E/CN.4/Sub.2/1991/10).

We also welcomed this initiative because as with persons disabled or ill from other conditions, persons with AIDS have experienced tremendous prejudice, misunderstanding and even persecution by private persons and by governments. The United States, for instance, still has discriminatory practices regarding travel visas for persons with AIDS. Additionally, there have been insufficient funds allocated for AIDS research, inadequate medical care and social services, and a failure to plan for future fiscal needs. Internationally, there is also discrimination involving fund allocation - there are some developing countries with overwhelming AIDS problems, particularly in Africa, that do not receive a proportionate share of funds with which to serve persons with AIDS and to carry out effective prevention and information programmes.

Certain governments have passed over situations of abuse and discrimination in their countries by arguing that the main culprits are private persons. We are therefore pleased that the Rapporteur has quoted Mr. B.G. Ramcharan on this point, who reminds us that States are under a duty to take measure to protect people from private discrimination.

In conclusion, the United Nations Charter requires international cooperation in solving international problems of a humanitarian character. In addition to recommendation on how individual governments can improve discrimination against persons with AIDS, we hope the Rapporteur can make some conclusions and recommendations on how the international community can best fulfill its obligations under the Charter to address the serious situation of AIDS worldwide.



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Agenda item 18

PROTECTION OF MINORITIES

Written statement submitted by International Association of Educators for
World Peace, a non-governmental organization in consultative status

(category II)

The Secretary-General has received the following communication
which is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[26 August 1991]

1. "All men are born equal. Some are more equal than others"
(George Orwell). This is a very well-known and much quoted and misquoted
saying. The fact is, however, that there are many inequalities that exist all
around us. The disabled people of the world, and they are of the largest
minority - nearly 600 million of us are the most unequal of all groups. It
took us many years of struggle and, as the cliché goes, "with much blood,
sweat and tears" to get a document such as the World Programme of Action
concerning Disabled Persons to be written and adopted by United Nations
General Assembly (resolution 37/52) in December 1982. To we who are disabled,
the most vital of the three parts embodied in this, the "Magna Carta" of
disabled people, is the last section, namely the equalization of opportunity.

2. Disabled Peoples' International, and other disabled people as well, deeply appreciate the opportunity given to us by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to have our voices heard. Furthermore, we are indeed doubly pleased to have a Special Rapporteur in Mr. Leandro Despouy, who has so empathetically reflected most of our views. We consider the equalization of opportunities, as enunciated in the World Programme of Action, underlined in the report on human rights and disability (E/CN.4/1991/31) and most effectively supported by the members of the Sub-Commission to be vital to human rights values for disabled people. It is our hope that this first step will lead to disabled people being equal to their non-disabled compatriots in all aspects of life and living. Paragraphs 203-217 of the report address issues that are of vital importance.

3. The World Programme of Action talks in terms of rehabilitation. However, this presupposes several fundamental preconditions, namely that rehabilitation services are considered "good" for the disabled person. This may well be the case. However, a disabled person feels he/she is not in charge of what is being done to him/her or what the outcome will be. Therefore, for this to be effective, there must be two important preconditions:

(a) The disabled person must necessarily be part of his/her rehabilitation process; if, however, he/she is unable effectively to participate in this process, then the disabled person should have the right to nominate a person to be his/her advocate;

(b) The rehabilitation process must work within predetermined timeframes and with the approval and acceptance of the person concerned. This process and its duration should be explained prior to its commencement.

4. While applauding the World Health Organization's initiatives and the great success they have had with the Community-based Rehabilitation Services, we now feel that it is timely to shift the emphasis from the rehabilitative process to the integrative one in the community.

5. Rehabilitation tends to place all the activities of returning into the community squarely on the rehabilitee. This is now found to be somewhat unfair. Not only was the disabled person required to make the conscious effort at adjustment, he/she also had to make the physiological, physical and social transition from a non-disabled person to one with disability.

6. It is, however, considered to be more logical for the Government to take the necessary steps to make the environment more accessible to all its citizens, including people with disability, women and children.

7. Integration, at all levels, should be the modus operandi for the 1990s and beyond, in the field of education and training, cultural and social activities, economic and political systems, housing, transportation and in areas of recreation.

Disability rights and welfare institutionalization

8. The common practice of Governments to leave the disability issue in the hands of "charity" or "welfare" has resulted in serious violations and disregard of disability rights. Governments tend to make laws that protect welfare institutions against efforts by disabled people to protect their human rights, such as the right to a minimum wage, freedom of choice and acceptable working conditions. Therefore, to resolve this problem, Governments should be required to take up their social and economic responsibilities towards disabled people and not leave that entirely in the hands of charity. This should be a right protected by law.

9. Democratization of the process of formulating and implementing legislation is essential. Involving organizations of disabled people in both these processes will ensure that disabled people fully enjoy their rights and that their rights are truly protected by the law. Most existing legislative measures affecting the rights of the disabled have been the result of intervention by public welfare bodies or so-called experts on disability who usually never consult disabled people or their organizations. It is, therefore, not surprising that very often the result of such inputs, namely the eventual legislation, often operates against the disabled people it is supposed to protect.

10. The concept of charity has contributed substantially to the degradation of people with disabilities and to serious abuses of fundamental rights of disabled people. Because disabled people have to beg for charity in order to eat, drink, get dressed, be educated and receive medical attention, they have been expected to be grateful as well and not to "bite the hand that feeds them".



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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by Human Rights Advocates
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 August 1991]

WHICH PROVISIONS OF "VARIOUS UNITED NATIONS STANDARDS RELATING TO HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE" SHOULD BE KEPT IN MIND BY THE DRAFTERS OF MODEL TEXTS FOR NATIONAL LEGISLATION? (E/CN.4/Sub.2/1991/26)

1. This Sub-Commission is concerned primarily with the prevention of discrimination and the protection of minorities. Therefore, in a list of "standards relating to human rights in the administration of justice", should not the clauses of the International Bill of Human Rights that concern non-discrimination be included among those that are quoted in sections A and B of document E/CN.4/Sub.2/1991/26? (See, e.g. articles 2 and 7 of the Universal Declaration; articles 2 (1), 4 (1) and 26 of the International Covenant on Civil and Political Rights and article 2 (2) of the International Covenant on Economic, Social and Cultural Rights.)

2. The omission from the Secretary-General's list of still other norms in the International Bill of Human Rights also is puzzling. For instance, are human rights in the administration of justice adequately protected when no remedies are available or when existing remedies are ineffective? (See article 8 of the Universal Declaration and article 2 (3) of the International Covenant on Civil and Political Rights.)

3. Further, is not an individual denied justice if she or he is not recognized "as a person before the law" as required by article 6 of the Universal Declaration and article 16 of the International Covenant on Civil and Political Rights? And clearly, among other clauses that ought to be considered by drafters of national legislation are articles 14 (2) and 15 (2) of the Universal Declaration and articles 4 (2) and 8 (3) of the International Covenant on Civil and Political Rights (cf. articles 10 (2) (b) and 13 of the Covenant).



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REVIEW OF FURTHER DEVELOPMENTS IN THE FIELDS WITH
WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication
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resolution 1296 (XLIV).

[27 August 1991]

SOVEREIGNTY AND TERRITORIAL CONFLICTS WITHIN THE MULTINATIONAL FEDERATED
STATES OF YUGOSLAVIA AND THE USSR

1. The deliberations during the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities regarding the sovereignty and territorial conflicts (nationalities conflicts) within the multinational federated States of Yugoslavia and USSR merit some comments. In both States, the conflicts aggravated while the Sub-Commission was in session.
2. The increasingly violent nationalities conflicts in Yugoslavia and the human rights consequences thereof were not examined by the Sub-Commission, except that some references were made to the continuing human rights violations in Kosovo.

3. On the other hand, the situation in the USSR, including the failed coup d'état as well as the conflicts in the Baltic and Trans-Caucasus republics, merited more attention from the Sub-Commission. However, the Sub-Commission's deliberations in the case of the USSR raise some concerns, in particular: during the past three years, the Sub-Commission disregarded early warning signs and the human rights consequences of the use of military force to resolve nationalities conflicts in the Trans-Caucasus republics and elsewhere in the USSR; during the present session, the Sub-Commission discussed the coup d'état attempt on the eve of signing a new Union Treaty but did not consider the underlying causes - the nationalities conflicts. Sub-Commission members expressed concern about acts of violence which occurred at customs posts in the Baltic States, yet disregarded grave violations of human rights and humanitarian laws committed, in part, by the same authorities in other regions of the Union; the Sub-Commission hailed the lifting of state of emergency measures imposed by the coup d'état leaders but disregarded the discriminatory application of state of emergency measures still in effect in the Trans-Caucasus republics.

4. Bearing in mind the rapid development of the nationalities conflicts in the USSR and Yugoslavia as well as the secession of some of the constituting republics, the Sub-Commission could consider the following measures:

(a) Call upon all parties concerned to ensure respect for human rights and to take necessary measures to resolve conflicts without the use of force and instead to rely on dialogue, negotiation and mediation, in cooperation with the United Nations;

(b) Appeal to relevant authorities to respect fully the linguistic, cultural and religious rights of minorities within their territories;

(c) Appeal further to relevant authorities to ensure the non-discriminatory application of still remaining state of emergency decrees and to reinstate civilian authorities in those territories at the earliest possible opportunity;

(d) Urge all parties to respect fully the laws of armed conflict, and especially to end the forced transfer of populations;

(e) Request the Centre for Human Rights to make available advisory services to all relevant authorities to improve human rights conditions; and

(f) Invite the thematic Special Rapporteurs and the working groups to consider the relationship between conflicts within multinational federated States and the violations within their respective mandates.

5. In addition, the observation made in paragraph 12 of document E/CN.4/1991/NGO/44 of 20 February 1991 could provide a framework for future discussion of nationalities conflicts in the USSR as well as Yugoslavia:

"[S]elf-determination, the root cause of nationalities conflicts, and the sovereignty issues of the republics will have to be addressed

while at the same time maintaining protection of human rights - the other side of the same coin. To this end, it would be advantageous to provide for separate United Nations membership for all Soviet Republics (as...in the case of the Ukrainian SSR and the Byelorussian SSR). This could provide the international community with direct access to monitoring human rights within the Republics, as well as providing the Republics with access to United Nations procedures for resolution of nationalities conflicts."



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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session

Agenda item 12

HUMAN RIGHTS AND DISABILITY

Written statement submitted by Human Rights Advocates
a non-governmental organization in consultative status
(category II)

1. "I like to believe, and I do believe, that despite all of his frailties and follies man will not only survive on earth through reason, common sense, and the will to live, but that through the unlimited creative capacity of his genius, he will continue to advance." 1/ These are the last words addressed to the United Nations by the late Ralph Bunche, Under-Secretary-General (International), as he strained, reading from huge cards held in his hands - hands that used highest diplomacy to fight for the rights of all while he personally rose above the double discrimination of racism and disability.

2. In solidarity with Ralph Bunche, may we share that we like to believe, and we do believe, that the development of instruments for the prevention of discrimination and the protection of minorities reads like a roadmap through which one can chart efforts to advance. A litany of international instruments exists through which human rights can be enhanced ... if individuals and Governments apply their will and utilize their creativity to enforce them. 2/ 3/

3. Many people seem to view "different issues" of human rights as if they were separate explosions illuminating the battleground of survival. Others clearly see the interrelatedness of all life and view the "issues" as connected spokes within a prayer-wheel spinning for peace. One "issue" that clearly demonstrates this latter view, is "disability". Disability thrusts itself into every culture, race, age group and other social delineation. It knows well illegal detention and torture; it knows well the indigenous; it knows well women and children; it knows well policies of racial discrimination, segregation and apartheid; and tragically, it knows too well the lack of independence and impartiality of the judiciary.
4. It is with particular joy that we note that the report on human rights and disability by Special Rapporteur Leandro Despouy now joins the body of essential human rights instruments. To commend Mr. Despouy for his personal insight and great sensitivity to the rights of individuals with disabilities would not be enough. To commend Mr. Despouy for his serious efforts to gather the immense body of information available and having presented it in a comprehensive way would not be enough. To commend Mr. Despouy for his continuing openness to experts within the population who are disabled would not be enough. What must be done is to take this report and transform it into action, as a matter of urgency.
5. As expressed in her extensive study "Status of the individual and contemporary law" (E/CN.4/Sub.2/1989/40), Special Rapporteur Erica-Irene Daes sharply brings to our attention that political expression and political wisdom are not always synonymous. However, under her study's larger title of "Promotion, protection and restoration of human rights at national, regional and international levels", it is heartening to see equally clearly that resolutions passed at the Sub-Commission level carry a legal or quasi-legal force and can be effective instruments.
6. The distinguished Mr. Danilo Türk, wrote: "every conquest of a corner of freedom, achieved through the courage of the very poor in defending human dignity, opens up society as a whole to a renovation of its human rights practice" (E/CN.4/Sub.2/1990/19). A well-substantiated fact is that individuals with disabilities are the poorest of the poor. Indeed, this group through defending human dignity is opening up society as a whole to renovation.
7. Violations of human dignity and, therefore, of human rights are like a virus that has not yet been checked. Therefore, Human Rights Advocates would like to focus on two aspects: prevention and cure. The mechanics of prevention in medicine, for instance, take many forms depending upon the nature of the virus. In the case of human rights violations injected into the mainstream of life, the preventative measures are titrated from one essential element from which many healing compounds may be created: that essential element is "attitude".
8. Attitude, as Mr. Despouy so eloquently shows, is the key inhibitor: he chooses to depart from the "classical approach ... which does not regard it (disability) as something which concerns us all"; 4/ because persons live with "social and physical barriers which prevent their integration and full

participation in the community. As a result, millions of children and adults, throughout the world, are segregated and deprived of virtually all their rights, and lead a wretched, marginal life"; 5/ thus, "it is essential to rid ourselves of any feelings of pity or commiseration. We are not dealing with a strictly humanitarian problem, still less with a situation requiring our charity"; 6/ "the obligation (is) to do what is necessary to enable persons with disabilities to enjoy the effective exercise of all their human rights on an equal footing with others". 7/ This exposition of attitudinal changes necessary to prevent the further erosion of human rights for individuals already disabled is further expanded as the report delves into the causal factors of disability itself. 8/ Each cause is directly related to a gross violation of universal human rights, 9/ or a distorted application of them. 10/

9. This observer (not representing Human Rights Advocates at the time) had the privilege of attending the Permanent People's Tribunal earlier this year in the United States at Yale University. It focused on "industrial and environmental hazards and human rights". The Tribunal heard oral testimony and received other evidence from victims of industrial disasters from Japan, India, the Marshall Islands, the United Kingdom and various parts of the United States. Examined was, testimony concerning hazardous technologies and products ranging from those used in war (Agent Orange), to devices or drugs (Dalkon Shield and DES), asbestos poisoning, the continuing disabling effects from radiation exposure due to atomic testing or the unsafe mining and processing of radioactive materials, mercury poisoning in Japan, workers killed and dying through industrial waste hazards or toxic fumes, including the victims of the gas disaster in Bhopal, India.

10. Several people at the Tribunal wanted also to attend this year's Sub-Commission to urge the direct linkage of human rights with preventative measures concerning disability. Their own health and financial restraints did not permit this. A copy of the Tribunal decision is available through the Centre for Human Rights. Hopefully, one of the testimonies will serve as a stimulant to those who are focusing on the preventative side of disability.

11. Testimony given at the Tribunal by Prentice Taylor and Dan Brooks of Workers Against Toxic Chemical Hazards of Youngstown, Ohio, spoke powerfully about how it was able to get General Motors to "clean up". 11/ 12/ 13/ 14/ 15/ That story underlined one of the judges' opinions: "it is essential to recognize the existing personal responsibility of the managers of such corporations and agencies, as well as other concerned public officials". 16/

12. Is that not echoed clearly in the Despouy report? Is it not the normative responsibility of community, as a whole, to address as individual responsibility the eradication of the attitudinal virus that not only feeds the violations of human rights but also spawns them?

13. As often with medicine, inherent in the preventative measures can be the cure. If healthy attitudes concerning human rights in general are enhanced through education, media, legislative and judicial processes, etc., and powerfully linked to the International Bill of Human Rights, cures like the transfer of independence-promoting technology to developing nations will be

normative; eliminating any mutilation of an individual, for whatever reason, will be normative; creating environments where choices for access to education, work, and all aspects of life for all will be normative; the existence of an ombudsman/office will be normative. It would not be necessary for us here to create a special resolution concerning access, even at the Palais in Geneva, for the disabled, including the deaf and blind, enabling their full participation in the United Nations process.

14. The only real question is: Do we have the will and do we choose to delve into the depths of our own creativity, or are we going to continue to allow the virus of our own attitudes to disable each of us and our world? Can we say, with Ralph Bunche, "I like to believe, and I do believe, that despite all of his frailties and follies man will not only survive on earth through reason, common sense, and the will to live, but that through the unlimited creative capacity of his genius, he will continue to advance". 17/ We like to believe, and we do believe ...

We can; we must!

Notes

1/ Ralph Bunche: The Man and his Times, Benjamin Rivlin, (ed.) Holmes & Meier, New York/London, 1990, p. 264.

2/ Special Rapporteur, Mr. Leandro Despouy, E/CN.4/Sub.2/1991/31, paras. 27-82.

3/ Permanent People's Tribunal, Decision from the United States session, "Tribunal on Industrial and Environmental Hazards and Human Rights", released 17 July 1991, pp. 6-13.

4/ Special Rapporteur, Mr. Leandro Despouy, E/CN.4/Sub.2/1991/31, para. 2.

5/ Ibid., para. 3.

6/ Ibid., para. 5.

7/ Ibid., para. 7.

8/ Ibid., paras. 109-180.

9/ Ibid., paras. 119-173.

10/ Ibid., paras. 174-180.

11/ Permanent People's Tribunal, op. cit., p. 4.

12/ Ibid., p. 14.

13/ Ibid., p. 17.

14/ Ibid., p. 19.

15/ Ibid., pp. 20-22.

16/ Press release, Permanent People's Tribunal on Industrial Hazards and Human Rights, "Worldwide Human Rights Abuses of Industrial Disaster Victims Cited", 17 July 1991, p. 1.

17/ Ralph Bunche: The Man and his Times, op. cit., p. 264.

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Forty-third session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE
SUB-COMMISSION HAS BEEN CONCERNED

HUMAN RIGHTS AND THE ENVIRONMENT

A written statement submitted by the International Commission
of Jurists, a non-governmental organization in consultative
status (category II)

The Secretary-General has received the following communication
which is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[23 August 1991]

1. The International Commission of Jurists (ICJ) welcomes Mrs. Ksentini's preliminary report on human rights and the environment (E/CN.4/Sub.2/1991/8). We believe that the report will serve as a useful basis for discussion in the Sub-Commission, in the wider community, as well as in the preparatory process of the United Nations Conference on Environment and Development.
2. We recognize the critical nature of the global ecological crisis and believe that the human rights dimension offers a significant contribution to endeavours to solve it.

3. We therefore welcome Mrs. Ksentini's practical, action-oriented approach. As we suggested last year, the study should be practical and not become immersed in a theoretical or juridical discussion.

4. The report touches on the role of the bodies responsible for monitoring States' compliance with two of the human rights treaties. We hope that the Special Rapporteur's next report will contain a thorough examination not only of the two bodies mentioned by her, i.e. the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, but also of the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women.

5. The ICJ believes, for instance, that the denial of women's rights often lies at the heart of environmental and development issues. In many societies the systematic devaluing of women marginalizes a significant proportion of the population. In many instances, the concerns of women are more sensitively attuned to environmentally sound and sustainable development models. When they are systematically discriminated against, their accumulated knowledge and values lose their legitimacy, and the consequential lack of balance may create inappropriate development decisions and policies which result in environmental degradation.

6. The ICJ, like the Special Rapporteur, recognizes the fundamental importance of the right to education, information and participation in decision-making in the environmental field. Again, we look forward to the Special Rapporteur's expanded analysis and conclusions in relation to these topics. In this respect, we suggest that when the Special Rapporteur is reconsidering her preliminary conclusion contained in paragraph 103, which relates to new dimensions of a series of recognized rights (i.e. the right to information, participation, association, etc.), she include education as well. We believe that education at all levels can play a key role in preventing and solving environmental problems. When the citizenry is more informed about the consequences of environmentally damaging activities, when they are more aware of the avenues available to combat such damage, they are in a much better position to make an effective contribution towards ensuring environmentally sustainable decision-making.

7. We especially appreciate the recognition by Mrs. Ksentini of the indissoluble links between environmental degradation and human rights violations contained in section II.C entitled "Assaults of the environment and human rights" on the one hand and "violations of human rights and assaults on the environment" on the other hand. We look forward to the Special Rapporteur's expanded in-depth analysis of the precise relationship between specific human rights violations and environmental degradation, especially in the context of emerging notions of ecologically sustainable development.

8. We agree with the Special Rapporteur's conclusion that the right to environment cannot be reduced to the right of individuals to claim an environment of quality, nor can it be separated from the problem of development and hence from the right of individuals and peoples to sustainable development. This collective aspect to the right to environment is

paramount. This is not to deny, however, the importance of ensuring that implementation mechanisms are open to individuals and NGOs to enforce their respective rights.

9. As Mrs. Ksentini has recognized, effective participation, or participatory democracy, is a critical issue in the context of effective environmental decision-making.

10. In section III.C of the report, the Special Rapporteur deals with permissible limits on particular rights, acknowledging that such an endeavour is always a risky undertaking because if such limits are misapplied they can take all substance out of the right. Hence, we suggest that Mrs. Ksentini adopt a modified approach. Instead of typifying the relationship between different rights as limiting each right, the Special Rapporteur should approach each right on the basis of its interdependence with other rights. In both ecological and economic terms, notions of interdependence and interconnectedness are recognized as having paramount importance.

11. The Special Rapporteur has, as requested by so many experts and NGOs, including the ICJ, dealt extensively with the question of indigenous peoples. The ICJ would support the closer examination of the question of the relationship between environmental degradation and the denial of indigenous peoples' right to self determination. We note that environmental and human rights issues are both present in many situations that have resulted in major conflicts.

12. Finally, we agree that the right to development is a primary issue in the context of environmental protection.

13. ICJ will furnish a more complete written analysis of the report to the Special Rapporteur and the other Sub-Commission members when it has had more time to examine it; it will also supply a copy of the report of the Conference on Human Rights and Environment to be hosted by the Australian Section of the ICJ and the Asia Pacific Centre for International Environmental Law in Sydney, Australia, in October this year.



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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH
WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

HUMAN RIGHTS AND THE ENVIRONMENT

Written statement submitted by International Educational Development Inc.,
a non-governmental organization in consultative status (roster)

The Secretary-General has received the following communication
which is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[30 August 1991]

1. International Educational Development welcomes the work undertaken by the Sub-Commission and the Special Rapporteur, Mrs. Fatma Zohra Ksentini, to address human rights and the environment. Although the Special Rapporteur is still in the early stages of her work, we are also pleased that she has spent much time meeting with and listening to non-governmental organizations on this important topic. We attended such a meeting with her and a number of other NGOs at the invitation of the Sierra Club Legal Defense Fund, and were very impressed with her insight and understanding of environmental human rights concerns.

2. Mrs. Ksentini's note (E/CN.4/Sub.2/1990/12) and her preliminary report (E/CN.4/Sub.2/1991/8) set out some of the areas of consideration and some of the initial replies and comments regarding her work. We would like to address one substantive issue which we feel merits attention as her work progresses: environmental refugees.

3. Man-made and natural environmental disasters quite obviously cause people to migrate to other areas out of danger zones. Danger zones can include areas where man-made objects such as dams, power plants and industrial facilities give way or emit dangerous forces, or where human activities have led to depletion of agricultural land, or where military operations have destroyed water or food supplies. For example, the recent indiscriminate bombing of the Iraqi people and their subsistence resources and the ongoing bombing of Tamil population centres in Sri Lanka are two of the many examples of this latter problem. Natural phenomena include drought, hurricane, earthquake and the like. Frequently, these migrations of people involve crossing international boundaries.

4. Refugee law, the primary body of international law addressing movement of peoples from one country to another, provides legal rights for persons fleeing armed conflict, persons fleeing persecution and persons fleeing torture. Yet the right to life and security of the person, the rights to health, the right to food and the right to employment are all put at risk by environmental disasters. The international community must provide sufficient rights to ensure adequate protection for persons fleeing such disasters.

5. As Mr. Hector Gros Espiell, the distinguished representative of Uruguay, stated at the 1991 session of the Commission on Human Rights, it will be necessary to revise all the traditional definitions of the concept of refugees. To that comment we add that it will also be necessary to revise the remedies available for refugees to accommodate the special circumstances of ecological refugees. Ecological refugees do not necessarily need the right to long-term "asylum" in another country, but may only need the right to temporary shelter or care. However, they certainly need the protection of the right of non-refoulement until life-threatening dangers have abated.

6. In this area, the traditional international law of necessity may be relevant. Rights arising from necessity are most evolved in maritime law, where there is a duty to rescue at sea as well as a right of endangered vessels to enter any country during a storm, even without prior customs clearance. (The international rule is "any port in a storm".) Surely the international community can recognize the equivalency of the dangers involved between storms at sea and disaster on land.

7. We urge the Special Rapporteur to request information regarding ecological refugees and the best ways to protect vital human rights. In this light, we think comments by the United Nations High Commissioner for Refugees could be especially helpful.

Discrimination against HIV-infected people or people with AIDS

8. International Educational Development is also pleased with the efforts of the Sub-Commission and its Special Rapporteur, Mr. Luis Varela Quiros, to address discrimination resulting from AIDS (E/CN.4/Sub.2/1991/10). We are also equally pleased at the willingness of the Rapporteur to discuss the topic with non-governmental organizations, and we have taken advantage of that willingness.

9. We understand the issue of discrimination to be twofold:

(a) There is discrimination in allocation of resources for medical research and treatment of AIDS by private and governmental entities;

(b) There is discrimination against AIDS patients in the areas of travel, education, employment, social services, etc., in society as a whole and by Governments.

The discrimination arises from negative attitudes towards persons with AIDS or HIV. As the Secretary-General stated in his speech to the General Assembly on 20 October 1987: "the fight against AIDS is also a fight against fear, against prejudice and against irrational action born of ignorance. For these are the cause of the most critical violations of human rights".

10. We agree with the Special Rapporteur that:

(a) Discrimination against persons with AIDS is not justified under international law;

(b) The "public health" rationale or excuse for discrimination is no longer tenable in light of current scientific knowledge;

(c) Education is the key to stopping both the AIDS epidemic and the pattern of human rights violations of persons who already have AIDS;

(d) Governments must repeal all discriminatory laws, as they are based on outdated concepts.

We also insist that Governments must allocate more resources to both AIDS research and medical care.

11. We look forward to the final report of the Special Rapporteur, hopefully due at the Sub-Commission's 1992 session. We are convinced that this report will be a most important document in changing the current depressing reality of discrimination against persons with AIDS. As the Secretary-General also said: "Our battle is against AIDS, not against people with AIDS."

The right to freedom of opinion and expression

12. International Educational Development also is pleased at the decision of the Sub-Commission to address freedom of expression and opinion. This topic, considered a cornerstone of the Universal Declaration of Human Rights, has regrettably languished with declarations still in draft form after 30 years,

only 12 ratifications of the one scant Convention (Convention on the International Right of Correction, United Nations Treaty Series, No. 191, Vol. 439) and serious neglect. Now, with two Special Rapporteurs, Mr. Louis Joinet and Mr. Danilo Türk, we hope that there will be renewed vigor in affirming this right.

13. The importance of these rights is perhaps best illustrated by examples of the lengths that Governments go to prevent the free flow of opinion, expression and information. For example, the United States had a law, only very recently abolished, that prohibited entry visas to persons considered to have opinions considered "too leftist". The current and immediately preceding administrations both used that law to exclude from entry into the United States Nobel laureate for literature Mr. Gabriel García Márquez and head of the Palestine Liberation Organization, Mr. Yasser Arafat - the latter even to address the United Nations.

14. In India, the Government has arrested Mr. Sivanayagam, a Tamil refugee from Sri Lanka and the editor of a newspaper called Tamil Nation, published both in India and the United Kingdom. The Indian Government calls the publication a "clandestine" one, even though it has been published openly. Indeed, the only case against Mr. Sivanayagam, a fearlessly independent man, appears to be his support for the Tamil people in their struggle in Sri Lanka. Mr. Sivanayagam stated: "Tamil Nation is nobody's mouthpiece and is proud of its individuality and independence. If an Indian newspaper supports the Palestinian cause, it does not become a mouthpiece for the PLO."

15. In conclusion, these are but two of the hundreds of thousands of examples that need to be addressed. IED anticipates that the work of the rapporteurs will place this area back into the spotlight it so sorely needs. Perhaps the United Nations as a whole can be persuaded to take up again the draft declarations and other instruments with a view to strengthening and adopting them.



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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE
SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the Four Directions
Council, a non-governmental organization in
consultative status (category II)

The Secretary-General has received the following communication
which is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[29 August 1991]

Four Directions Council has the honour to transmit the following
information, prepared by Baru Bian and Mutang Urud, on behalf of the Penan
people of Malaysia.

1. Sarawak, "The land of the hornbills" is on the north-western coast of
Borneo and is geographically the largest state in Malaysia. Its land areas is
roughly 124,449 sq km or about 38 per cent of the total land area of Malaysia.

2. In 1989, Sarawak had a population of 1.6 million, and population growth
continues at 2.7 per cent per year. The different "races" that now make up
Sarawak are as follows (1989):

Natives:	Indigeneous "Dayak" (26 tribes)	43.50%
	Malay and Melanau	26.50%
Non-natives:	Chinese and others	30.00%
Total:		100.00%

81 per cent of the total population lives in the rural areas of the state.

3. The Dayaks have been practising swidden agriculture in the hilly areas. Their traditions and spiritual beliefs are centred on their relationships to the land. Some Dayak communities lived in long houses built close to the rivers on which they depend as means of transport, and a source of fish and water. They also depend to a large extent on hunting and gathering. To the Penans, who are largely nomadic, the forests are their only sanctuary. For all Dayaks, the land, the waters and the forests have provided them with all they need for their existence. This existence is being threatened by logging.

4. From 1965 to 1985, about 30 per cent of Sarawak's forest land had been logged and 60 per cent had been given out as timber concessions. In 1989, the Sarawak Government reported it had extracted 18 million cubic metres of timber. That figure could be doubled as it does not take account of illegal trading.

5. Of Sarawak's total area, 95,232 sq km is covered by forest. Since the early 1980s, Malaysia has been the world's leading exporter of tropical hardwood, accounting for 58 per cent of world tropical log exports and 81 per cent of Asian exports.

6. Before the Second World War, commercial logging took place largely in the swamp forests where it was not a threat to any group. Logging then spread inland, now threatening the Dayaks who are mostly settled in the interior. As early as the 1970s, the Dayaks have organized resistance against logging companies.

7. In most cases, logging covers areas surrounding Dayak long houses or villages, and results in damage to farming land, crops and graveyards. River and streams are polluted, wild animals are driven from hunting grounds, jungle produce like rattan, wild fruits and medicinal plants are destroyed and fish populations are diminishing due to water pollution. The nomadic Penans are most threatened by the destruction of the forest since they totally depend on the forest for their survival. According to government estimates, there are 9,300 Penans and one quarter are still nomadic.

8. Under Section 2 of the Sarawak Land Code (Cap.81) 1958, Native Customary Land has been defined, inter alia, as "(a) land in which native customary rights, whether communal or otherwise, have been created prior to the first day of January 1958 and still subsists as such". Under Section 5 (2) of the Land Code, six methods have been specified by which native customary rights may be acquired:

1. The felling of virgin jungle and the occupation of the land thereby cleared;
2. The planting of land with fruit trees;
3. The occupation or cultivation of land;
4. The use of land for a burial ground or shrine;
5. The use of land of any class for rights of way; or
6. Any other lawful methods.

9. For natives to claim successfully a parcel of land as native customary land, they must prove at least one of the specified methods and that the method or methods was/were in use prior to 1 January 1958. In most cases, the native peoples of Sarawak established their rights much earlier than 1 January 1958, being the natives of the country who occupied and cultivated these areas since time immemorial.

10. In early 1987, natives from the upper Limbang river erected a barricade across a road owned by a timber licensee, alleging trespass and desecration of their ancestral burial grounds. The natives were then charged under section 26 of the Penal Code for causing a public nuisance on a public road. They were all acquitted after the magistrate ruled that a company road was not a public road but a private road. As such, section 268 did not apply.

11. Enraged by the court's decision, the Sarawak State Assembly responded by sponsoring an amendment to the Forest Ordinance (section 90B). Section 90B makes it an offence for any person to obstruct a road constructed or maintained by a timber licensee. The section further gives any forest officer the power to arrest any offender, without a warrant, and to enlist the assistance of police officers.

12. Section 90B is open to abuse. In many cases it has been invoked to harass and intimidate protesters. At almost every blockade organized by the natives, police personnel were called. In the latest case, warning shots were fired. In another case, a group of 42 natives were charged with illegal occupation of state land for barricading a timber road and were detained for a two-week period; the charge was subsequently withdrawn and they were freed. At the moment, there are about 20 prosecutions, under way in Sarawak against natives for illegally blockading timber roads under section 90B of the Forest Ordinance.

13. Aside from the defence of native people's rights, indiscriminate logging should be restrained for the following reasons:

(a) To protect and preserve the quantity and quality of water in streams and rivers, the only source of water for human consumption and agriculture;

(b) To protect and preserve wild animals, which are an important source of protein for native communities, and other products of the forest which are essential for their basic needs and cash income;

(c) To preserve adequate timber reserves to meet domestic needs, such as the construction of houses, firewood, fences and bridges.

14. Logging has caused major water pollution. There are reports of diarrhoea due to water pollution in areas where recent logging has affected streams. No studies have been done to assess the environmental impact of logging in Sarawak, as required under the Environmental Quality Act.

15. The natives affected by logging activities are asking that:

(a) The licensees and logging contractors should respect and recognize their rights over their customary land, as provided for by the laws of the State;

(b) Where there has been damaged done to customary land without consent, the licensees and contractors should compensate the natives;

(c) The terms and conditions of licences should exclude native customary land from the licensed area, and licences should be revoked immediately on the slightest evidence of violation of this condition;

(d) Water catchment areas should not be included in any licence;

(e) The Land Code and the Forest Ordinance of Sarawak should be amended to protect the Penans and other native people, in particular by the repeal of section 90B of the Forest Ordinance;

(f) Native customary land should be surveyed and demarcated; and titles given to the native owners;

(g) Environmental impacts should be studied before the Government issues or renews any timber licences, in accordance with the Environmental Quality Act;

(h) The role of extraction of timber in the state should be reduced immediately, and parties affected by this reduction should be compensated;

(i) The Sarawak State Government must recognize that logging is a serious problem and invite an independent group to assess the damage done so far;

(j) International organizations should consider how they can help resolve the problems caused by deforestation in Sarawak.
